



November 15, 2001

Ms. Cynthia B. Garcia
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2001-5290

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154963.

The City of Fort Worth (the "city") received a request for the following information: (a) "[t]he internal affairs case log reflecting a summary of all complaints; investigations; and conclusions as well as any discipline for [a certain officer]," and (b) "[a]ny correspondence directed to the above officer notifying him he is being disciplined or placed on administrative leave and the reasons therefore." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exception you claim and reviewed the submitted information.

From your brief, we understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The civil service file must contain certain specified items, including documents relating to any misconduct in those cases where the police department took disciplinary action against the peace officer. *See id.* § 143.089(a)(2). However, documents relating to any alleged misconduct or disciplinary action taken must be removed from the civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See id.* § 143.089(b), (c). Thus, subsections (a)-(c) limit the contents of the civil service file.

Subsection (g) authorizes but does not require the city police department to maintain for its use a separate and independent, internal personnel file on a peace officer. Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. See *City of San Antonio*, 851 S.W.2d at 949. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records may not be withheld unless one of the Public Information Act's exceptions applies. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

You inform us that investigations concerning the specified officer did not result in disciplinary action because there was insufficient evidence to sustain the charge of misconduct. Thus, information about the investigations was not placed in the civil service file, and we assume it is instead maintained as part of the city's confidential (g) file. Consequently, the submitted information is confidential under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code and must be withheld.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

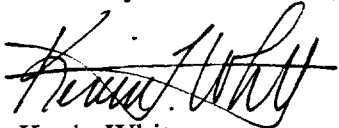
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin White", is written over a horizontal line.

Kevin White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 154963

Enc. Submitted documents

c: Mr. David B. Sloane
933 West Weatherford Street
Fort Worth, Texas 76102
(w/o enclosures)